



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Par III Associates

File: B-255244

Date: February 22, 1994

William B. Moore, Esq., Schwabe, Williamson, Ferguson & Burdell, for the protester.

Wayne Paffhausen, Mountain States Leasing-Coeur d'Alene, an interested party.

Allen W. Smith, Department of Agriculture, for the agency. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's exclusion of a proposal from the competitive range is reasonable where the offeror failed to establish in its proposal how its proposed building would satisfy solicitation requirements for handicapped accessibility and parking or show how flooding problems on the site would be corrected.

DECISION

Par III Associates protests the United States Forest Service's award to Mountain States Leasing-Coeur d'Alene of a lease of office and other space in Idaho under request for proposals (RFP) No. R1-93-8. Par's proposal was rejected as unacceptable and was excluded from the competitive range. Par, the incumbent lessor, contends that the agency had no basis for excluding its proposal from the competitive range.

We deny the protest.

The RFP required firms to offer a lease of office, warehouse/storage, and secured wareyard space and visitor/employee parking spaces. Under the RFP, offerors were to propose a 5-year lease with options to renew the lease for three additional 5-year periods. The RFP required that an offeror submit for evaluation plans and specifications containing detailed information about architectural, mechanical, electrical, and energy conservation features proposed to meet the solicitation requirements. The RFP also required that offerors furnish a reproducible drawing of floor plans drawn on a scale of 1/8 inch to the foot showing the space offered and the location of all existing

windows, structural features, and mechanical equipment. Further, the RFP provided that alterations or other work required to meet RFP specifications were to be clearly marked on the plans or, if not, explained in an attached narrative statement. If new construction was being proposed, drawings of a plot and elevation plan were to be provided.

Under the RFP, the following four technical factors, listed in descending order of importance, were to be evaluated: (1) suitability of design; (2) accessibility and location; (3) environmental factors and safety; and (4) energy conservation. The RFP defined suitability of design as building design and site utilization as they relate to the quality and efficient utilization of space for both current and future agency needs. This factor also included evaluation of the design for diverse weather conditions and the parking and traffic flow design. The second factor, accessibility and location, covered the offered property's accessibility to the public, including the handicapped, its size and shape, drainage characteristics and topography. The environmental and safety factor concerned police and fire protection, public and employee access to the property, the type of properties surrounding the offered property, and undesirable environmental factors, if any. Under the agency conservation factor, conservation features of the building were to be evaluated.

The RFP provided that prices were to be evaluated on the basis of the lowest annual per-square-foot cost to the government for the amount and type of space offered--taking into account an estimate of relocation costs to the government and any escalation provisions for operating costs and real estate taxes. The RFP also provided that award would be made to that offeror whose proposal was technically acceptable and whose technical/price relationship was the most advantageous to the government.

Five offerors submitted a total of 15 proposals. Proposals were first evaluated by each member of the evaluation panel and then the panel agreed on a consensus point score for each proposal. The proposals were ranked based on the consensus scoring. Based on the initial evaluation results and site visits, six of the proposals were rejected as outside the competitive range. The agency found that Par's proposal and two other firms' proposals were unacceptable but susceptible to being made acceptable and these offers were included in the initial competitive range. Par's proposal of the property currently occupied by the Forest Service was ranked the lowest of those offers in the initial competitive range. The agency scored the remaining proposals considerably higher than Par's, with the exception of one that received a virtually identical score.

In a letter of July 8, 1993, to Par, the agency identified a significant number of concerns in the areas of building design, site suitability, and handicapped accessibility. The agency discussed the concerns with Par on July 26.

By letter of August 4, the contracting officer asked Par to submit a revised proposal based on the discussions. The contracting officer requested that Par address 14 areas of concerns, which basically were the same as those identified above and clarified by the oral discussions. These areas included the flexibility of the design of the proposed building to accommodate changes in agency needs; after-hours security; the need for a site plan for the required parking spaces showing how the 20-percent expansion of spaces over past requirements would be met and how oversized vehicle parking would be provided; the repair and replacement of exterior doors; the retrofitting that would be made to meet the RFP's accessibility requirements; the measures needed to prevent flooding of the building and water leaks from the roof (problems under the current lease of the building); and Par's financial capability to perform the required modifications to the building.

Revised proposals were submitted on August 19. The agency then reevaluated the proposals. The agency found Par's revised proposal unacceptable and rejected it as outside the competitive range. Among other things, the agency concluded that it was impossible from the information provided by Par to determine how Par's property would be modified to comply with the RFP accessibility requirements. Specifically, the revised proposal did not show how the property would comply with the accessibility requirements regarding the elevator, bathrooms, and the slope of the visitor parking area. The agency also found that the proposal did not adequately comply with the parking requirements--no specific plan was proposed to show compliance with the increase in the required parking spaces. Par's proposed solution to the oversized vehicle parking requirement was not acceptable due to location and traffic flow and the location of the garbage dumpster, which could affect parking, was not shown in the plans. Further, the agency found that the proposal did not adequately address required parking for disabled persons; for example, the proposal did not address the size and number of spaces or the difficulties posed by the slope of the property from the parking lot to the building. Finally, the agency concluded that Par's discussion of how the building would be protected against future water leaks and flooding was not adequate to ensure the protection of government property.

Par contends that its proposal was improperly rejected because it did respond in sufficient detail to the problem areas identified by the agency and took no exceptions to the

RFP requirements. Par further argues that the agency could not disregard its proposal in view of the fact that it offered the lowest price of any of the proposals received.

As a general rule, the competitive range in a negotiated procurement consists of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible to being made acceptable through discussions. Even where proposal deficiencies are minor and readily correctable through clarifications or discussions, the agency may properly exclude a proposal from the competitive range where, relative to other acceptable offers, the proposal has no reasonable chance of being selected for award. Lincoln Property Co., B-247664, May 22, 1992, 92-1 CPD ¶ 469. A technically unacceptable offer can be excluded from the competitive range irrespective of its low price. Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94. The evaluation of proposals and the determination of whether an offeror is in the competitive range (whether made prior to or after discussions) are matters within the discretion of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them. In reviewing an agency's technical evaluation and competitive range determination, we will not independently evaluate proposals; rather, we will consider whether the evaluation had a reasonable basis and was in accord with the listed evaluation criteria, and whether there were any violations of procurement statutes or regulations. Advanced Micrographics, Inc., B-245319.2, Jan. 8, 1992, 92-1 CPD ¶ 36.

After reviewing the protest record, we conclude that the agency's evaluation of Par's proposal and its consequent decision to exclude that proposal from the competitive range were reasonable. For example, while Par suggested several possible solutions to the requirement for a parking space expansion, including restriping standard-size spaces and designating them for compact vehicles, and the acquisition or lease of additional contiguous property on which to locate the spaces, the RFP required the offeror to expressly show in its drawings or plans that the spaces would be provided. Par's offer to purchase additional property to meet the parking space expansion, "if required during the lease" (as stated in Par's revised proposal), does not meet the requirement to establish compliance with the parking requirement in its drawings and plans. It is not disputed by Par that its proposed existing site is inadequate to meet the expansion requirement. We think the agency reasonably concluded that Par's intention to leave a decision as to how to meet the requirement to the future was unacceptable. Further, as the agency points out, Par failed to provide for parking spaces for handicapped persons or for the correction

of slope problems with the site and made no provision for dumpster location (which would reduce the number of spaces available).

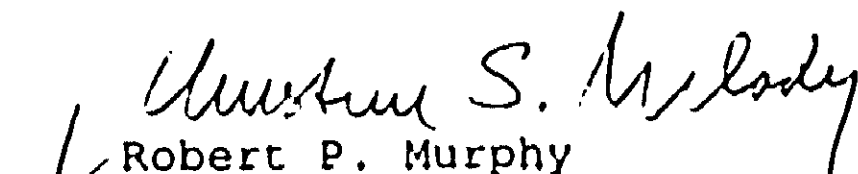
Further, as regards the building accessibility requirements, Par's revised proposal stated that "[t]he accessibility requirements . . . will be met and in place at the start of the new lease." According to Par's revised proposal, its plan was to survey existing agency employees to determine their needs and first priority would be placed on meeting those needs. Also, Par promised to meet "the accessibility requirements . . . for all physically challenged persons that could or might be using the facility. . . ." Again, the agency found these general assurances inadequate, since the RFP requested detailed drawings and plans. We agree. It is the responsibility of the offeror in its proposal to demonstrate the technical sufficiency of what it is offering, and a blanket offer of compliance is not sufficient to meet a solicitation requirement for specific information which an agency deems necessary for evaluating the technical acceptability of proposals. Lincoln Property Co., supra. Further, the elevator and bathrooms as shown on Par's drawings do not show compliance with the accessibility requirements.

Finally, regarding the problems with flooding and the leaking roof, Par stated in its revised proposal that the catchbasin on the east side of the building "is being evaluated and if found insufficient will be replaced under the current lease;" the roof would be maintained by "anticipatory maintenance in the future." Thus, the proposal does not provide any concrete assurances that any existing problems would be corrected. The agency concluded that Par was not necessarily acknowledging that any problem existed. For instance, Par in its proposal suggested that previous flooding was a single occurrence caused by an "extraordinary localized cloudburst" which provided too much rain for the town's storm drains to handle and by the fact that a door in the building was improperly left open. Based on this statement, the agency reasonably questioned Par's commitment to correcting the flooding problem.

Par argues that a comparison of the evaluation of Mountain States' proposal and Par's proposal shows that Par's proposal was unfairly evaluated. We disagree. In contrast to Par's revised proposal, Mountain States' revised proposal included all the necessary drawings showing compliance with accessibility and other requirements. While the proposal failed to indicate the scale on one drawing, and the agency states that the scale otherwise could be determined from the dimensions shown on the drawing. Further, Mountain States submitted a parking plan with a more than sufficient number of spaces so that all the agency's parking requirements

would be satisfied. Also, the agency determined that the property upon which Mountain States would build was flat and level and did not pose the same risk of flooding as Par's property, which spans the gap of a steep gully and was known to have flooding problems. Thus, it is clear from the record that while Par's revised proposal was unacceptable such that it was reasonably excluded from the competitive range, Mountain States submitted an acceptable offer in the competitive range. We see nothing improper in the agency's evaluation of these two offers.

The protest is denied.


Robert P. Murphy
Acting General Counsel